

APPEAL NO. 020234
FILED MARCH 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 2002. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 7th quarter. The claimant appealed, arguing that no other record "showed" that he had an ability to work during the qualifying period for the 7th quarter. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 7th quarter. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable injury and that the claimant has at least a 15% impairment rating. The claimant contended that, as a result of his compensable injury, he had no ability to work during the qualifying period for the 7th quarter.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that Dr. O narrative and the history and physical report of August 14, 2001, were other records showing that the claimant is able to return to work. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within her province as the fact finder in determining that Dr. O's report showed an ability to work. Her determination in that regard is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. As such, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the 7th quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FREMONT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge